

# Navajo Pawn: A Misunderstood Traditional Trading Practice

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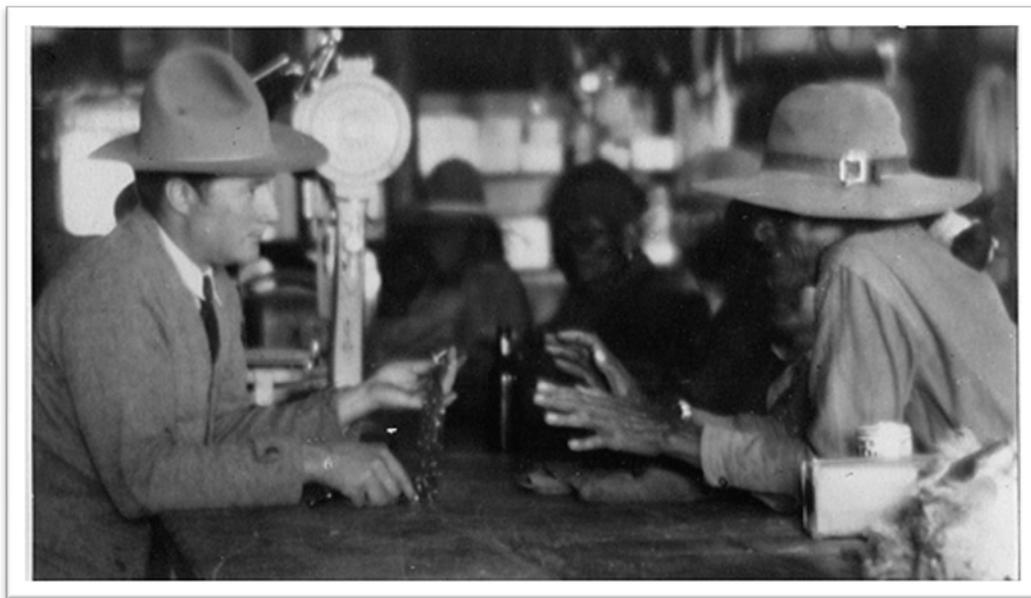


Image 1: Roman Hubbell at work with a customer at Hubbell Trading Post. Circa 1900, photographer unknown. (HUTR 4381)

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## Abstract

### “Navajo Pawn: A Misunderstood Traditional Trading Practice”

Navajo pawn originated in the 1870s as a bartering and banking system altogether different from straight trading. Pawn gradually developed over decades to become an important, fully-integrated part of Navajo culture. By the mid-twentieth century, hundreds of traders in Navajo country dealt in pawn, eventually bringing the practice to the forefront of controversy. Beginning in the late 1960s, partially as a result of Navajo grievances arising from unscrupulous trader practices and partially due to new federal lending regulations, pawn became a lightning-rod issue. By 1975, the FTC had conducted three years of investigations and hearings on the reservation. This resulted in new regulations that made pawn unprofitable and forced many of the traders off the reservation. Today, pawn continues to thrive in towns bordering the reservation; it remains a highly important, pivotal aspect of Navajo culture, serving as their primary banking system. Pawn represents the development of trust- and respect-based relationships between Navajo people and Anglo-American traders over the course of almost a century-and-a-half. My research goes into great depth beginning in the late 1960s, as I examine the various federal investigations and hearings on the Navajo reservation and the direct impact these events had on pawn. The paper then examines Navajo pawn as it exists today, analyzing the various pawn laws and how traders conduct their businesses, as well as the use of pawn by the Navajo people in their daily lives. Fifteen oral history interviews support portions of this work.

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## Trade and Pawn With The Dine

Navajo trading posts date to the mid-nineteenth century, tracing their roots to 1868 when the tribe returned to their traditional homelands from a devastating five-year captivity at the Bosque Redondo Reservation in New Mexico. Beginning in the early 1870s, Euro-American settlers slowly filtered into the Navajo homelands and built trading posts in order to address a growing demand among Easterners for native-made goods. In the case of the Navajo tribe, the most predominant items of trade were jewelry and blankets, for which the tribe has become well known across the United States. Along with the concept of trading with the Navajos emerged another trade practice: pawn. The story of pawn on and off the Navajo reservation is one of great complexity, it having continuously evolved over the decades from a primitive practice to a widespread, highly important component of Navajo culture.

As the market for Navajo goods grew among the populations throughout America, so too did the trading and pawn business. Pawn became “a means of trade unique to the Navajo tribe, and which officials in the Indian Office sought to control, originating both from the shortage of money and from the Navajos’ skill in working silver and turquoise.”<sup>1</sup> In 1868, when the Navajos returned to their traditional homelands from Bosque Redondo, trading posts did not exist on the newly formed Navajo reservation. However, the enterprise quickly spread: there would be 79 trading posts by 1900 and 154 by 1930, exclusive of the dozens of posts located off the reservation.<sup>2</sup>

The institution of pawn on the Navajo reservation came under fire from government officials as early as 1887, a trend that would continue for decades to come

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<sup>1</sup> Frank McNitt, *The Indian Traders* (Norman: University of Oklahoma Press, 1962), p. 55.

<sup>2</sup> L. David Weiss, *The Development of Capitalism in the Navajo Nation* (Minneapolis: MEP Publications, 1984), p. 73.

and which has not entirely ceased even in the modern era. In that year, Indian agent S.S. Patterson attempted to put an end to Navajo pawn altogether. He cited the practice as being “frequently the cause of a vast amount of trouble and angry disputes...which I saw might lead to serious results.” Patterson approached the various Indian traders in order to persuade them “to agree to receive no more goods on pawn...which agreement has been carried out. As a result of this act both traders and Indians are well satisfied.”<sup>3</sup> If Patterson believed his exertions to have succeeded, he was painfully mistaken, as the practice of pawn in fact never ceased at all. If anything, it continued to grow and evolve throughout that early period.

Not all trading posts accepted pawn; each respective Indian trader made the decision whether or not to engage in the practice. Many in fact did not, as the profitability of pawn often proved marginal at best, especially when compared to the more lucrative business of straight trading.<sup>4</sup> Pawn required that a trader hold an item for an extended period of time and then collect interest, whereas straight trading consisted of a one-time transaction, much easier to keep track of and requiring no storage.

Regardless of its profitability for the trader, pawn was, and remains, an essential component of the Navajo culture and economy, providing them with a means of obtaining quick cash-on-credit and also serving as their banking system. “Banks won’t do small loans, which is usually what the Navajo needs,” noted Bill Malone, who has been involved in the trade since 1961 and is now a trader at Shush Yaz in Gallup, New Mexico. “They come in and they need \$50 or \$100 on an item. And banks, they won’t

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<sup>3</sup> Annual Report, Commissioner of Indian Affairs, in McNitt, *The Indian Traders*, p. 56.

<sup>4</sup> Bill Richardson, a modern trader in Gallup, attests to this fact: “My dad said he never made a dime on pawn. It always lost money.... Today we don’t make much money on pawn. The interest rate has stayed the same, but other costs have gone up over the years.” (Bill Richardson, Interview with the Author, Gallup, New Mexico, November 6, 2009.)

mess with loans that small, so the pawnshop becomes their banking system. Their pawn is their bank.”<sup>5</sup>



Image 2: Shush Yaz Trading Co. in Gallup, New Mexico is one of several larger trading posts in Gallup that take pawn. (Photo: The Author)

Former trader Elijah Blair reiterates the importance of pawn as a banking system for the Navajo people, stating, “[They] cannot go to conventional financial institutions and borrow money. [The Navajo] has no collateral, he doesn’t have anything. If he has a pickup, his equity in it is already gone.... So they come to us to pawn to get money to pay car payments or buy food...because they cannot get money anywhere else.”<sup>6</sup>

In order to appreciate the importance of pawn to the Navajo people, it is essential to understand some general aspects of pawn as it exists not only within the Navajo Nation, but across the entire United States. Pawnshops originated in fifteenth century Europe and were known as *monti de pieta*, or “banks that take pity.”<sup>7</sup> As immigrants

<sup>5</sup> Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010.

<sup>6</sup> Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998.

<sup>7</sup> John P. Caskey, *Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor* (New York: Russell Sage Foundation, 1994), p. 13.

ventured into the Americas in the eighteenth century, pawn came with them.<sup>8</sup> Early American pawnshops typically existed in urban areas with a large working class population, the constituency to which the pawn business most readily appealed. “Pawnbrokers believe that most of their customers rent their homes and that many move frequently, have bad credit, and do not maintain bank accounts;” writes one historian, “they believe that a large share of their customers live from paycheck to paycheck.”<sup>9</sup> Indeed, demographically speaking, this description is applicable to many of the Navajo people, who traditionally use pawn as their banking system to obtain cash on an as-needed basis. Because of the pawnshop’s appeal to a less wealthy working class, it comes as no surprise that the institution is so readily accepted and embraced on the rural Navajo reservation.

A pawnshop transaction is a relatively simple process: “the broker makes a fixed term loan to a consumer, who leaves collateral in the possession of the broker. If the customer repays the loan and all required fees, the broker returns the collateral to the customer. If the customer does not repay the loan by a specified date, the collateral becomes the property of the broker and the customer’s debt is extinguished.”<sup>10</sup>

Across America, both state and local laws regulate modern off-reservation pawnshops. They all have several provisions in common: the pawn ticket must specify the terms of the loan contract; the ticket must state the customer’s name and address, a description of the item pledged, amount lent, maturity date, and the monetary amount

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<sup>8</sup> The prominence of pawn in the United States has grown substantially throughout the twentieth century. In 1911 there were 1,976 licensed pawnshops in the U.S., or one for every 47,500 citizens. By 1994, there were an estimated 9,000 pawnshops across America, an average of one for every 28,360 residents. (Ibid., p. 47).

<sup>9</sup> Ibid., p. 69.

<sup>10</sup> Ibid., p. 12.

necessary to redeem the item. The pawnbroker keeps one ticket and the customer keeps another. Regulations on interest rates vary, but the compounding of interest is not allowed. The common loan period of one to three months usually mandates a grace period of an equal one to three months after the initial loan matures.<sup>11</sup>

While this description is generally true of pawnshops across the United States, there would necessarily come to be some very important differentiating trademarks of the institution inasmuch as it concerned the Navajo people. That the institution of Navajo pawn would differ from pawn elsewhere was an inevitability, because Navajo culture utilized it in a different, more traditional manner; so, too, did the types of goods being pawned differ greatly. These differences would be exacerbated in the 1970s when federal agencies and organized legal aid associations brought the issue of Navajo trading and pawn to the forefront, forever changing the practice of pawn in and around the Navajo reservation.

#### Pawn Within The Navajo Nation

Taking pawn began as a nonchalant practice among Indian traders in the Navajo country, essentially just another component of a large and often complex trading business. Because it did not typically return any substantial profit, it was seldom foremost among a trader's concerns. Pawn was a very time-consuming pastime for the Navajo trader, requiring a separate ledger book, individual entries for each transaction, the filling out of pawn tickets by hand, and, ultimately, the storage and security of the pawned items. Despite all of its shortcomings, Anglo traders soon recognized that pawn provided an important method of economic subsistence for the Navajo people, and the practice was not only sustained but also continued to grow in prominence.

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<sup>11</sup> Ibid., pp. 37-39.

From the beginning, pawn served as a unique aspect of Navajo culture, acting as both a means of obtaining quick cash and as a storage facility for valuables. “[You have to] realize that the Navajo does not accumulate money,” explains Elijah Blair. “His security and his wealth was all put into his jewelry...and his status symbol was either in the livestock he owned...or the jewelry that he had.... So as long as he had jewelry, he could take it to any trading post...and then he could pawn for anything that he would want.”<sup>12</sup> Pawn operated in this way from its earliest beginnings on the reservation.

At Ganado, Arizona, Juan Lorenzo Hubbell began taking pawn at his trading post as early as the 1880s. Initially pawn comprised only a small-scale component of Hubbell’s business, perhaps the largest and most diversified trading operation on the reservation at that time. Hubbell’s business records, which have been preserved and are remarkably complete, provide some important insight into the nature of pawn as it existed in the early twentieth century.

A brief but highly indicative sampling of Hubbell’s pawn ledgers shows that in March, 1909, there were 179 individual transactions amounting to a total value of \$434.50. In May of that year, the number was markedly less, with 73 pawn transactions totaling an estimated value of \$184.40. The number grew substantially again in January 1910, when Hubbell recorded 187 pawn transactions at a value of \$487.10.<sup>13</sup>

The pattern in these numbers correlates to the time of year, which is attributable to the wool/sheep component of the Navajo economy. Historian Frank McNitt explains, “at any time of need, but especially in winter and summer, when they usually had no money, the Navajos could pawn their concho belts, silver bridles and bracelets, and

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<sup>12</sup> Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998.

<sup>13</sup> Hubbell Papers, *Business Records Daily*, Box 387, p. 137.

turquoise necklaces – even their guns. In the spring and fall, when they sheared their sheep, the Indians brought in their wool clip and were able to redeem their pawn.”<sup>14</sup>



Image 3: A pawned concho belt (HUTR 3187) with the pawn ticket still attached. The pawn ticket is dated September 22, 1936, pawned by Fur Cap’s Son with a loan period of 60 days. Photographer: NPS Photo by Nancy Eckel

During the wool season, a Navajo would have an increased amount of valuable goods (in the form of raw wool and blankets) to trade. In the off-seasons, when these resources were not readily available to them, pawn often would become the Navajo’s primary and most convenient method of monetary subsistence.<sup>15</sup> Paul Begay recalls that, “there [were] times when you needed to do it. Just because you had a hundred head of sheep didn’t mean that you had sheep to sell...for instance, in the middle of the summer...why would the Navajo sell five head of sheep when he could save [them]...so in the meantime they resort to their jewelry.... Growing up, I remember watching Mom and Dad do that. They would take off their bracelet, not sell it, but pawn it. And they would get some money – fifteen, twenty dollars maybe...that’s a lot of money.”<sup>16</sup>

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<sup>14</sup> McNitt, *The Indian Traders*, pp. 55-56. Lawrence David Weiss writes, “The institution of pawn was extremely important as a form of credit, particularly during winter and summer when wool sales were at low ebb.” (Weiss, *The Development of Capitalism in the Navajo Nation*, p. 56).

<sup>15</sup> Bill Malone notes that, “People typically redeem their pawn during wool season when they have goods or money to retrieve their pawned items. They then pawn the items again once the wool season has passed, in order to get through the slow times.” (Interview with the Author, Gallup, New Mexico, January 7, 2010).

<sup>16</sup> Paul Begay, Cline Library Interview, Page, Arizona, February 10, 1998.

In more modern times this continued, but for different reasons. Whereas the frequency of pawn transactions once coincided with the wool seasons, it now coincides with the time of the month at which Navajos receive Social Security checks and other government payments. As the month progresses, and this money runs out, families turn to pawn to get by until the next monthly check arrives.<sup>17</sup>

An analysis of the pawn ledger books at the Hubbell Trading Post reveals some interesting facts about early record-keeping techniques (or a total lack thereof) among the Indian traders. The ledgers were remarkably simplistic in nature compared to modern procedures. As a noteworthy example, Hubbell's ledgers contained a column for the pledgor's name; however, the person's actual name is almost never given. Instead, the notation typically gives a familial relation: "Loco's Aunt," for example. Oftentimes, the trader simply wrote, "No Name."<sup>18</sup>

While this habit of not keeping track of person's names may seem like a very imprudent and potentially confusing method of record keeping, it is important to understand the *modus operandi* of early Indian traders. In the late nineteenth century, it was the trademark of a good trader to recognize his customers not necessarily by name (oftentimes the trader never knew the actual names of many of their customers) but rather by appearance and their familial association to other customers. Bill Richardson, who comes from a long line of traders dating back to the early 1900s, explains, "the old traders just *knew* who everybody was. That was part of the business."<sup>19</sup>

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<sup>17</sup> Kathleen Tabaha, Interview with the Author, Ganado, Arizona, November 6, 2009.

<sup>18</sup> Ibid.

<sup>19</sup> Bill Richardson, Interview with the Author, Gallup, New Mexico, November 6, 2009.

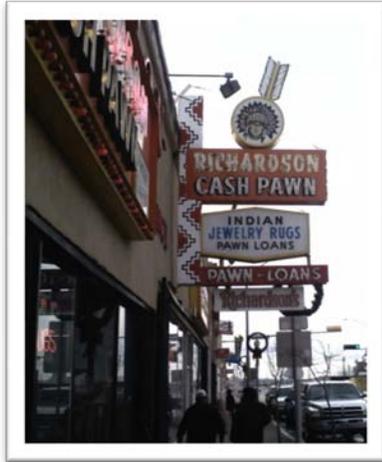


Photo 4 & 5: Richardson's Cash Pawn, on old Route 66 in downtown Gallup. Now owned by Bill Richardson, this trading post and pawn dealership has been in business since 1913. (Photos: The Author)

The traders would also record in their ledger a description of the item being pawned. These descriptions were, with little variation, as equally ambiguous as the “name” column. The descriptions in Hubbell’s ledger books generally read nothing more than simply “bracelet,” “belt,” or “beads.” The trader thus had to keep track of the items in his own memory, and the Navajo pledgor must likewise be able to identify their belongings correctly when returning to redeem the pawn.

Historically, each pawn transaction carried an initial interest charge of ten percent (which remains common lawful practice to this day). If a bracelet was deemed to have a retail value of \$6.00, then the pledgor could take out a loan up to but not exceeding that amount. At the issuance of the loan, the pledgor immediately accrued a debt of ten percent of the loan amount. Each transaction also listed a specific redemption date in order for the pledgor to avoid either additional interest charges or risk their item

becoming “dead pawn.”<sup>20</sup> Interestingly, in analyzing Hubbell’s pawn ledgers, one finds that approximately half of the transactions are marked “paid,” and the balance of transactions are left blank in that column. This would suggest one of two things: either Hubbell was lackadaisical in maintaining his ledger books, or else nearly half of all pawn transactions at Hubbell’s trading post were never redeemed. Perhaps a combination of the two would be the most likely explanation.<sup>21</sup>

When J.L. Hubbell took in an item as pawn, whether it was a bracelet, saddle, or any other item, it typically spent a long time in his storage room.<sup>22</sup> Hubbell records indicate that the majority of pawned items were not redeemed until at least a year after the date of the initial transaction. Surprisingly, in the majority of instances, the item was paid off all at once rather than in periodic installments. The payment of debt in gradual installments would have reduced the amount owed, and thus also reduced the amount of interest accruing on each respective pawned item. However, it is important to understand that the Navajo rarely possessed the means to gradually pay off an item. Rather, they would pay the debt in full when the money became available to them, usually during the more prosperous wool season.

By the 1930s, ledger books at Hubbell Trading Post became much more organized; the full name of the pledgor was used in place of the “no name” demarcation

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<sup>20</sup> An item became “dead pawn” after the allotted payment deadline had passed and the pledgor had still neglected to pay the debt in full. At that point, the pawned item technically became the property of the trader and he could decide whether to retain it or attempt to sell it.

<sup>21</sup> The notion that 50 percent of Hubbell’s pawn went dead seems difficult to accept. In modern times, according to several traders, only a small percentage of items reach the dead pawn stage. This is due in part to the granting of extensions on pay periods, which all traders will do.

<sup>22</sup> The pawn room, even in early times, was a place of no little wonder. Frank McNitt writes: “Many of the old trading posts had ‘pawn rooms’ – a frontier version of a jewelry store – a room flashing with silver and glowing with red and pink coral and turquoise ropes of beads, all tagged, the room smelling of leather and metal, the pawn dangling from hooks on the walls, all waiting to be redeemed.” (McNitt, *The Indian Traders*, p. 56).

of times past. By that time, the number of pawn transactions had multiplied considerably, necessitating a more concise method of record keeping.<sup>23</sup> The increase in pawn transactions was due, not primarily to an increase in the frequency and popularity of pawn on the reservation, but rather to a rapid and continuing increase in the population of the Navajo people in general.

The Hubbell Trading Post continued to engage in pawn transactions until 1964, at which time it appears that the practice was terminated. No records or ledgers appear after that date. The cessation of pawn could have been a result of the National Park Service's acquisition of Hubbell Trading Post in 1965, although that postulation has not been confirmed. As will be seen, the discontinuance of pawn at the Hubbell Trading Post prophesized, albeit inadvertently, the coming events of the 1970s, when pawn would cease altogether on the Navajo reservation.

Pawn had remained a vital, necessary component of Navajo trading since the time of its inception on the reservation in the 1870s. Navajo trading was, and always had been, regulated by the Bureau of Indian Affairs (BIA) and in the 1960s many began to argue that this federal agency was too permissive in its trading and pawning policies. However well-rooted the institution was, it began to change drastically and rapidly beginning in July, 1969 with the federal government's passage of the Truth In Lending Act. When these new lending laws were enacted, the BIA was slow to enforce them, the result being a continuation of previous trading practices that were no longer legal. "Because [the traders] are subject to BIA regulations, they're not subject to state law, and

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<sup>23</sup> Hubbell Papers, *op. cit.*

the tribe has no jurisdiction over non-Indians, so they're not subject to tribal law. They're operating really as a federally licensed, unregulated monopoly," wrote one observer.<sup>24</sup>

The newly enacted Truth In Lending Act, which promulgated nationwide changes in requirements for credit lending businesses, included traders on the Navajo reservation. Because traders were included in the new lending laws, this act would be the catalyst for incredible controversy across the reservation surrounding traders and the pawn system.

### Pawn Comes Under Fire

The pawn institution, as it existed on the reservation, was perhaps predestined to undergo public scrutiny at some point. Pawn, by its very nature, tends to incite controversy from time to time. Early on in its existence accusations arose that the pawn business exploited the poor and provided an outlet for stolen merchandise, an accusation that has not entirely dissipated even in the modern era.<sup>25</sup> The implementation of new BIA and tribal regulations beginning in the late 1960s would have a considerable effect on the traditional trading practice of pawn. By the time the federal government began to take notice of the enterprise, pawn had emerged as a firmly embedded trading practice in Navajo culture.<sup>26</sup>

The 1969 Truth In Lending Act required that all credit lenders, including pawnbrokers, reveal interest rates and specify all debts for payment and extensions.<sup>27</sup> An immediate backlash resulted among the Anglo traders, who complained about the

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<sup>24</sup> Sherry Zimmer Robinson, "Navajo Jewelry: High Fashion and Pawn System," *The Nation* 221(19) December 6, 1975, pp. 584.

<sup>25</sup> Caskey, *Fringe Banking*, p. 47.

<sup>26</sup> Willow Powers, *Navajo Trading: The End of an Era* (Albuquerque: University of New Mexico Press, 2001), p. 183.

<sup>27</sup> Consumer Credit Protection Act, *Section 1 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968*].

ambiguity of the regulations and questioned their enforceability both on and off the reservation.

Graham Holmes, Bureau of Indian Affairs (BIA) director in the Navajo area, and Ike Merry, Secretary of the United Indian Traders Association (UITA) began a contentious correspondence with one another over the issues arising from the Truth In Lending Act. Holmes asked that Merry provide the BIA with details outlining the various steps that the UITA and its members planned to take in order to come into compliance with the new federal lending regulations. In his inquiry, Holmes made specific mention of pawn practices. Secretary Merry responded that the regulations would be confusing and difficult to comply with for Navajo traders; he attributed this statement to the unique nature of their business, one unlike any other credit-lending institution in the country.<sup>28</sup> The contention between these two leading officials regarding lending practices on and off the Navajo reservation would prove to be a sign of things to come.

Almost coinciding with the passage of the Truth In Lending Act was the creation of the Dinebeina Nahiilna Be Agha'diit'ahii or DNA, in 1967. Loosely translated, this means "lawyers for the restoration of Navajo life."<sup>29</sup> This corporation consisted of a group of Anglo attorneys with the avowed purpose of representing the Navajos in their

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<sup>28</sup> Merry to Holmes, July 23, 1969, UITA Papers, Cline Library, MS299, Series 3.

<sup>29</sup> Powers, *Navajo Trading*, p. 153. The DNA's mission statement, as currently written, states: "DNA People's Legal Services is a 501(c)(3) nonprofit legal aid organization working to protect civil rights, promote tribal sovereignty and alleviate civil legal problems for people who live in poverty in the Southwestern United States. Since 1967, DNA has provided free legal aid in remote portions of three states and seven Native American nations, helping thousands of low income people annually to achieve long lasting economic stability by providing access to tribal, state and federal justice systems...." (quoted at: <http://www.dnalegalservices.org/>)

various legal suits.<sup>30</sup> “It attempts to protect the Navajo people from collection abuses by local merchants and salesmen on the reservation,” writes one historian, “and, in so doing, it incurs the wrath of many businessmen who charge the DNA with promoting irresponsibility among Navajo consumers.”<sup>31</sup> Among the primary objectives of this organization in the 1960s and 1970s was to get rid of traditional trading practices and, in so doing, promulgate a more native-controlled economic system on the reservation.<sup>32</sup>

DNA traced its roots back to 1966 when it originated as the Office of Navajo Economic Opportunity Legal Aid and Defender Society, a name that would soon be changed to the DNA epithet. By 1968, the legal organization consisted of 18 lawyers and 16 Navajo tribal court advocates; in the upcoming years it would grow substantially both in size and influence.<sup>33</sup>

The majority of Navajo Indian traders, both on and off the reservation, were members of the United Indian Traders Association. **Error! Bookmark not defined.** This organization, originally founded in 1931 “for the perpetuation and protection of handmade Indian arts and crafts,” would find itself fully enthralled in the trading and pawn debate in the late 1960s and early 1970s.<sup>34</sup> With headquarters in Farmington, New Mexico, the UITA provided an effective outlet for trader grievances and would prove to be the primary avenue through which contention to the DNA was directed in upcoming

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<sup>30</sup> The DNA set up offices in Chinle, Crownpoint, Shiprock, Tuba City, and Window Rock. “Thousands of Dine flocked to its offices to seek assistance on a variety of matters, including sales contracts, grazing rights, misdemeanors, pawn, and state and local welfare.” (Peter Iverson, *Dine: A History of the Navajos*, (Albuquerque: University of New Mexico Press, 1999), p. 239)).

<sup>31</sup> Kent Gilbreath, *Red Capitalism: An Analysis of the Navajo Economy* (Norman: University of Oklahoma Press, 1973), p. 36.

<sup>32</sup> Powers, *Navajo Trading*, p. 176.

<sup>33</sup> *Ibid.*, pp. 152-156. The Office of Navajo Economic Opportunity, ONEO originated as a result of President Lyndon B. Johnson’s war on poverty and resulting creation of the more general Office of Economic Opportunity. The ONEO was developed to support the Navajo people in their self-determination movements. (See Iverson, *Dine: A History of the Navajos*, pp. 236-238)).

<sup>34</sup> Powers, *Navajo Trading*, p. 75.

years. New lending regulations, as outlined in the Truth-In-Lending Act, brought about staunch resistance from the UITA, who hired a team of lawyers from Phoenix, Arizona to provide legal representation for the organization and its members in cases litigated by the DNA. Thus, the UITA continuously found itself pitted against the DNA in legal battles concerning trading practices, and especially pawn, in the Navajo Nation.

Indian grievances inevitably arose from the implementation of the new Truth In Lending Laws in 1969. Among these grievances were numerous complaints about trader irresponsibility related to pawn; traders were accused of egregious practices, including occurrences of lost pawn and excessive, unfair interest rates. These complaints stemmed from incidents involving only a select few corrupt traders; by and large Indian traders were honest, upstanding individuals held in high regard by the Navajo people. Indeed, they operated in the Navajo people's homelands, and those traders who acted inappropriately did not tend to last long in the enterprise. High moral standards of conducting business on the part of the Anglo-Americans composed one of the most significant components of Navajo trading; to stray from this business ideology and commit egregious acts such as those mentioned in subsequent government reports would be severely undermining to all parties involved.

In fairness to the traders it should be noted that, in some instances where misunderstandings developed, distraught Navajos complained of practices that were in fact completely legal. One example is a trader's legal right to sell pawn after a fixed period of time has elapsed on the item without any payments having been made by the customer (the item is then referred to as "dead pawn"). A trader acted well within their legal right to sell such items in order to recoup losses from the initial loan made on the

item. However, doing so contradicted an unspoken but universally understood code of ethics between trader and Indian.<sup>35</sup> While most traders refrained from selling dead pawn in consideration of the falling out that would occur with customers, there arose instances in which dead pawn simply had to be sold to ensure the trader's own economic well-being. "Anybody with a pawn shop has to sell some of the dead pawn sooner or later to make ends meet," explains Bill Malone, a trader in Gallup. "You just can't keep all of it."<sup>36</sup>

During the 1970s an increased national interest in Native American artifacts exacerbated the selling of dead pawn. As the market for Navajo jewelry grew and the value of these items rose, the temptation to sell dead pawn became overwhelming for some traders. This proved especially true for traders located off the reservation, to whom BIA trading regulations did not apply. State pawn laws stipulated a shorter holding period for dead pawn, thus enabling such traders to sell such items sooner if they so desired.<sup>37</sup> Most traders continued to hold dead pawn items in the interest of maintaining harmony and trust with their Navajo customers, but, inevitably, some were less adherent to this practice.

Joe Danoff, a former trader at Ganado in the 1950s, has noted that he frequently sold pawn after it became dead pawn. He recalls that he kept pawn transactions at his trading post to a minimum because of the unprofitable nature of the enterprise. Still, he took pawn on many occasions. "The old traders...they held that pawn forever," he stated, "[but] I was too much of a businessperson to say, 'hey, this is not making me any

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<sup>35</sup> Jim Babbitt, whose family owned several trading posts, states, "Certainly there were very ethical people throughout the reservation who operated in a good way...even though legally they could have sold off the old pawn..." (Cline Library Interview, Flagstaff, Arizona, July 21, 1999.)

<sup>36</sup> Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010.

<sup>37</sup> Ibid.

money.’ So I wanted that pawn to turn over, and I would push that pretty hard. And when it came due and they didn’t redeem it, it went out in the showcase and I sold it.”<sup>38</sup> This predicament was one that all traders faced, and they approached it in different ways. Danoff, in quickly selling dead pawn, represented the minority of traders in that practice. Still, it occurred with enough frequency that it generated protests among the Navajo people.

Any modern-day trader will be quick to state that they almost never sell dead pawn, for two reasons. First, to do so is to violate the longstanding sentiment of trust between themselves and their Navajo customers that is paramount to the success of their business. While a trader might make a quick profit off of such a sale, the fact remained that it would create feelings of ill will between the trader and their clients. The traders lost a considerable amount of business through the act of selling dead pawn, and many of them quickly recognized this. “You never sold pawn,” says Russ Griswold, a trader at Tse Bonito, New Mexico, “unless it came from a stranger, then you might.”<sup>39</sup>

Additionally, and perhaps ironically, it is in the trader’s best economic interests to *not* sell dead pawn items. “After pawn goes dead,” says Russ Griswold, “50 percent of it is bought back by the same person who pawned it to begin with.” He notes that it is better to ensure that pawned items remain in the local market, because in most cases the same items will be pawned at his store over and over again. Once an item leaves the local market (typically through sale to a tourist), it is gone forever, and the trader can no longer make any money from that item. “We do our utmost to keep pawn here in the local

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<sup>38</sup> Joe Danoff, Cline Library Interview, Gallup, New Mexico, January, 2000. He continued, “Some of my Navajos...if you sold their pawn, they’d come in, ‘Well, I’m going to the DNA.’ ‘So go to the DNA!!’ you know? You’ll always get those threats. So you have to contend with those things.” Ibid.

<sup>39</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010.

market,” he added.<sup>40</sup> Former UITA President and Indian trader Elijah Blair further attested: “There was no point to a one-time sale. You make more money over a period of time pawning and re-pawning and collecting interest, than a one-time sale, and you keep the customer happy....”<sup>41</sup> This same ideology, that of keeping the customer happy at almost all costs, is still employed by all successful trading businesses to this day. Customer satisfaction may take years to develop among the Navajo, but can disintegrate instantaneously. This is true across cultural and societal boundaries, and can be attributed in part to human nature: it is often difficult to regain trust in an individual once having been wronged by them, a rule to which the trader-Navajo relationship is not an exception.

One better-founded set of complaints directed towards pawn led directly to a lawsuit against traders William and C.F. McGee, proprietors of Pinon Mercantile Company on the reservation in Arizona. Filed on October 1, 1971 by DNA lawyers, the class action suit alleged blatant violations of the 1969 Truth In Lending Act. The lawsuit specifically cited grievances claiming that Pinon Mercantile Company was raising interest rates on pawned items after the transaction had been completed and without duly notifying the respective owners of the pawn. The result, as stated in one article, was that “when a customer thought he had his account all paid up he would be told by the trader that he still owed.”<sup>42</sup>

Such practices by traders were certainly uncommon, but nevertheless occurred from time to time. “The suit specifically called attention to hidden finance charges and failure to comply with the 1969 Truth In Lending Act,” wrote one news source.

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<sup>40</sup> Ibid.

<sup>41</sup> Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998.

<sup>42</sup> “Navahos Sue Big Time Trader,” *Dine Baa-Hani*, December 22, 1971.

Accordingly, the incident was particularly important because of the publicity it received in newspapers throughout Arizona and New Mexico, thus bringing to public light the existence of such nefarious trader practices. “These suits can put an end to these illegal practices and give the Navajo people the same kind of protection from unscrupulous merchants as the rest of Americans already have.”<sup>43</sup>

Navajo people were accustomed to the paying interest on pawned items, understanding that the interest charge was the trader’s means of making a living for themselves. “Three, four dollars or five dollars interest is a small price to pay for what you got,” Paul Begay notes, adding that most traders were well meaning.<sup>44</sup> It was not the interest charge itself, but rather the unscrupulous, hidden interest rate hikes that caught the Navajos off-guard and that caught the attention of lawyers and government agencies.

The legal action taken against Pinon Mercantile Company proved significant for its role as a catalyst for future events on the reservation. This and other lawsuits, coupled with complaints about trading by Navajos and the continued presence of DNA lawyers eager to hold irresponsible traders accountable, led to a large-scale investigation of trading practices by the Federal Trade Commission in 1972.

#### The 1973 FTC Report

The report on Navajo trading published by the Federal Trade Commission is traced to a 1971 meeting between attorneys from that organization and attorneys from the DNA. During the meeting, “the DNA attorneys cited three questionable practices: withholding government checks; alleged price fixing; and Truth in Lending Act

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<sup>43</sup> Ibid.

<sup>44</sup> Paul Begay, Cline Library Interview, Page, Arizona, February 10, 1998.

violations, particularly in pawn transactions.”<sup>45</sup> As a result, the Commissioner of Indian Affairs requested in April 1972 that the FTC conduct a thorough investigation on the Navajo reservation in order that revised trading regulations might be promulgated. The investigation surveyed 95 percent of trading posts “on or near the reservation.” In their interviews with traders, FTC employees focused their questions specifically on pawn transactions, open-end credit, and mail delivery. Public hearings were held in Window Rock in August, 1972, at which time it was concluded that “one of the most onerous trader practices is credit saturation.”<sup>46</sup>

One trader who attended the hearing was Jay Springer. He recalled there being an FTC panel composed of several members leading the discussions. “[We] were asked to bring in records, and they quizzed you on what your practices were.... I think the thing I remember best was that one individual...said, ‘What I’m telling you is the truth, and if you don’t believe me, you could come out to the post and I’ll show you.’ The panelist’s response was, ‘Well, I’m paid too much to go out there on the middle of the reservation.’ So that was the end of that discussion.”<sup>47</sup>

Not surprisingly, these public hearings generated a considerable amount of controversy. UITA representatives and members contended at the time, and some traders still contend, that the hearings were purposely scheduled for times and places that would make them difficult to attend for traders located at distant, rural locations on the

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<sup>45</sup> FTC Report, pp. 1-2.

<sup>46</sup> Ibid. Credit saturation is defined by one economist as follows: “A person’s credit position is saturated if no additional credit can be obtained. However, the general nature of the relationship is relativistic and dynamic. Credit saturation as a process involves approaching the absolute limit in aggregate as well as individual terms. The common aggregative variable is the supply of loanable funds. In general, the illiquidity of credit saturation relationship can be associated with inelasticity of loanable funds.” (Warren S. Gramm, “Credit Saturation, Secular Redistribution, and Long-Run Stability,” *Journal of Economic Issues XII* (June 1978), p. 312.

<sup>47</sup> Jay Springer, Cline Library Interview, Flagstaff, Arizona, December 17, 1998.

reservation. Because the traders busied themselves maintaining their posts (a seven-days-a-week job), it was not possible for many of them to travel on short notice to Window Rock to attend these hearings. “Traders really got blindsided by those regulations,” recalled Russ Griswold a longtime trader and current proprietor of Griswold’s Pawn in Tse Bonito, New Mexico. He adds that very few traders, himself included, attended the FTC hearings in Window Rock. “It was just impractical to do so for most traders.”<sup>48</sup>

Regardless of which traders were or were not present at the public hearings, the FTC investigations continued, culminating in a scathing report published in 1973, much to the chagrin of all traders and especially the UITA. Pawn in particular received harsh criticism throughout the report: “Some of the most offensive trader practices involve pawned Navajo items.”<sup>49</sup>

The report duly recognized the importance of pawn as an economic institution for the Navajo people, noting that, “pawning personal possessions to obtain extra purchasing power is a prominent feature of the Navajo economy...by pledging items, Navajos are able to supplement their meager income.” However, the FTC also called direct attention to the fact that present pawn regulations “contain minimum standards which fail to prohibit offensive conduct.”<sup>50</sup>

The majority of the investigations were conducted within the boundaries of the reservation (the findings of the report were intended to influence the BIA and Navajo tribal council to change regulations on the reservation, as neither organization had

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<sup>48</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010.

<sup>49</sup> FTC Report, p. 22.

<sup>50</sup> Ibid., p. 22. One specific example cited in the report held that, “one provision erects a confusing redemption formula wherein an original six-month redemption period is continually extended for two months if the pledgor pays 25% of the amount due. (Ibid.)

jurisdiction or authority to change the law outside the reservation).<sup>51</sup> However, the FTC did not refrain from remarking critically of off-reservation pawn practices as well:

As on the reservation, pawn is important in off-reservation transactions. In addition to the barrage of repugnant pawn-related practices that confronts the reservation Navajo, the non-reservation Navajo encounters certain conduct peculiar to off-reservation situations. These unique, offensive practices are possible because off-reservation trading facilities are not subject to BIA regulation. They are under the statutory jurisdiction of the state in which they are located. State pawn and usury laws, especially in New Mexico, are characteristically permissive.<sup>52</sup>

The FTC cited several specific examples of questionable pawn practices that it felt needed to be addressed by new regulations. “Our investigation reveals that many of these pledges are obtained through questionable conduct. Particularly offensive is a ‘hostaging’ practice whereby the pawn is held for debts other than the original undertaking. Even when the original debt is discharged, the...agency continues to extort payments through retention of the pawn. After full payment of all debts, the pawned items are sometimes not returned and no provision is made for compensation for the converted articles.”<sup>53</sup>

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<sup>51</sup> The reverse was also true: “Because the Navajo reservation is a federal enclave, the States of Arizona, New Mexico and Utah are powerless to prohibit offensive practices committed by traders within their respective state boundaries. The Supreme Court of the United States has concluded that states cannot exercise jurisdiction on the Navajo reservation.” (Ibid., pp. 37-38).

<sup>52</sup> Ibid., p. 32. The “permissive” nature of New Mexico pawn laws was not exaggerated. Whereas Arizona maintained a state law setting the maximum pawn interest rate at 24% in 1973, the interest rate in New Mexico was 48%. Utah was equally excessive, allowing interest rates of 36% and 60%, depending on the value of the pawned item. (Natwig to Jaenish, January 22, 1974, UITA Papers, Cline Library Special Collections, MS299, Series 3, Box 6, Folder 87.)

<sup>53</sup> FTC Report, p. 33. (See *State vs. Ames Bros. Motor & Supply Co.*, Superior Court of Navajo County, Arizona, Docket No. 13306 (1972).

Another item drawn into question were pawn regulations permitting “unjust forfeiture procedures.” The current provisions required that a trader physically display any pawned item “in a conspicuous place” for a period not less than thirty days after the payment deadline before the item could be legally forfeited. There existed no law requiring that the trader notify the owner that their item had become “dead pawn,” and as a result many Navajos lost their jewelry and other possessions without realizing that the payment deadline had passed. While most traders did not sell dead pawn and would continue to hold it until the owner returned (traders frequently held pawn for over a year before it was redeemed), there were a few who did not adhere to this policy of unspoken courtesy.

As a result, in order “to insure that pledgors are aware that their security is imperiled, it is recommended that, not later than 30 days prior to expiration of the redemption period, the trader-pledgee be required to serve upon his pledgor written notice containing a description of the item, a statement of interest, principal and amount due, and a warning of impending forfeiture.”<sup>54</sup> Such a policy (which was indeed enacted and remains a required practice to this day) would be helpful in preventing hard feelings and misunderstandings between the traders and their Navajo customers. Oftentimes, a customer’s reason for failing to redeem their pawn on time was well founded; sometimes the Navajo lacked transportation to the post, sometimes extended periods of inclement weather could prevent them from traveling to the post, and sometimes they just simply forgot. All of these represent legitimate reasons for their lapse in payment, and most

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<sup>54</sup> FTC Report, p. 45. The report noted that some traders were already employing this notification procedure voluntarily.

honorable traders understood this. At any rate, the required issuance of notices of pending forfeiture for pawned items was a laudable recommendation.

Another suggested policy outlined in the FTC report, the mandatory minimum 12-month redemption period for all pawn, stipulated that notices must be mailed at the end of the eleventh month for pawn not yet redeemed.<sup>55</sup> Prior to the FTC investigation, the required redemption period had been six months. However, it is important to note that many traders were already voluntarily using a 12-month redemption period, so this recommendation was aimed at those who were not yet employing the practice. Even without the FTC suggestions, the 12-month redemption period would have been required in order to bring the traders into compliance with the Truth in Lending Act. Thus, any trader not already offering the one-year period of redemption technically violated that federal statute.

Yet another problematic attribute of the pawn system was the existence of “inequitable provisions that the trader may retain any surplus amount received from the sale of expired or dead pawn.” Inquiries made among traders at the FTC’s public hearings in Window Rock indicated that, on average, items secured as pawn had a market value much greater than the amount of the loan made to the pledgor. “Consequently,” the investigators concluded, “the trader derives unconscionable windfalls from those Navajos who are financially unable to reclaim their pledges.” To address this issue, they recommended that the trader be required by law to return any surplus monies or assets gained through the sale of dead pawn to the original owner, allowing only a 10 percent “administrative fee” to be retained by the trader. Furthermore, the surplus amount would have to be returned to the pledgor in U.S. currency and not other items of “equal value”

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<sup>55</sup> Ibid., pp. 45-46.

from the store. “Strict sanctions should be applied to those traders not recognizing the cash option,” the FTC concluded.<sup>56</sup>

The FTC made additional suggestions stemming from their extensive investigations into Navajo trading. First, the report outlined the necessity of regulating interest rates charged on pawned items, citing the fact that “high interest charges are common incidents of pawn transactions.” They recommended that a maximum interest rate be implemented to coincide with that of the State of Arizona, which was 24 percent. Second, in order to “resolve disputes when pawn tickets are misplaced or when pledged items are lost, copies of these records should be sent monthly to the Navajo Tribe. This procedure would establish the replacement value of any lost item by depositing a copy in the hands of a neutral party.” Finally, whereas previously the Bureau of Indian Affairs (BIA) maintained regulatory and enforcement powers over trading provisions on the reservation, they recommended that this authority be granted instead to the Navajo tribe.<sup>57</sup>

Interestingly, car dealerships were found to be particularly offensive in their business maneuverings and received special mention in the report. Automobiles had been present on the Navajo reservation since the early years of the twentieth century, but had not been introduced on a large scale until the 1960s. At that time, Navajo people began to pawn their personal belongings for cash to purchase cars. While accustomed to traditional pawn, consisting of small-value items, they were not accustomed to pawning on the scale of what a car cost. This placed the Navajos in a vulnerable position, and unscrupulous newcomers to the area exploited them at every opportunity. Most car

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<sup>56</sup> FTC Report, p. 46.

<sup>57</sup> *Ibid.*, pp. 47-53.

dealerships, owned and operated by newcomers with little understanding of the native culture and traditional trading practice, had no qualms about employing corrupt business tactics in order to take advantage of the Navajo's unfortunate naiveté in this regard.

The FTC maintained that, "new and used car dealerships accept pawnable Navajo jewelry and handicrafts as security for the credit purchase of vehicles. Not only will the car agency typically lack a pawn license, but often...will avoid the requirements of applicable pawn laws by couching the transaction as an outright purchase of the items. The agency, however, retains the articles under an oral commitment not to resell. Valuable Navajo jewelry and rugs are also taken to secure amounts owed or in lieu of delinquent payments."<sup>58</sup>

Many cars sold to Navajos were quickly repossessed, as the creditors lacked the patience and understanding of most of the longtime traders. Even after repossession the Navajo customer would still be expected to pay what they owed on the transaction.<sup>59</sup> This represented a new concept for the Indians (in a traditional pawn transaction, if the pawned item is sold by the creditor, that satisfies the outstanding debt and the transaction is thus terminated), and numerous DNA lawsuits arose as a result. The problem with car dealerships and their dabbling in the pawn trade was rightfully cited by the FTC as one of the more serious issues needing immediate attention.

The FTC investigations resulted in thirteen trading posts being charged with specific Truth In Lending Act violations between 1973 and 1975. Other posts were only partially in compliance with the new laws and received strict verbal warnings. One agency official noted that, "as long as there's poverty [on the reservation], there'll be a

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<sup>58</sup> Ibid., pp. 32-33.

<sup>59</sup> Powers, *Navajo Trading*, p. 160.

need for pawn, and as long as there's pawn, there'll be abuses. What we're hoping is that regulation from the BIA will limit those abuses.”<sup>60</sup>

The changes recommended by the FTC its 1973 report, if implemented, would have drastic ramifications for Indian traders both on and off the Navajo reservation. Such provisions, if enacted, would change the nature of Navajo trading and pawn forever. Many of the traders maintained (and continue to maintain) that the DNA lawyers, while attempting to do good on the reservation, possessed a fundamental misunderstanding of the Navajo people, their economy, and their culture. “The ways in which [pawn] had always operated – by words, not paper; by need, not value; by trust, not law – were Navajo ways, developed within the Navajo community context, of which the trader was a part,” one author observes.<sup>61</sup> Colin Tanner, proprietor of T & R Market north of Gallup, further states, “The DNA thought they were going to change trading. “They thought the posts should be run by the Navajos so they could make a profit for themselves. But they didn't understand. That's not the Navajo way. The Navajo people share with one another to get by; they don't have a need or desire in their culture to turn a huge profit. So what the DNA wanted to do could have never worked, and in the end it hurt the Navajos a lot more than it helped them.”<sup>62</sup>

Not surprisingly, the controversial FTC report became the subject of legal proceedings that would last for nearly three years, pitting the DNA and the UITA against one another in one court case after another.

### New Trading Regulations

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<sup>60</sup> Quoted in Sherry Zimmer Robinson, “Navajo Jewelry: High Fashion and Pawn System,” *The Nation* 221(19) December 6, 1975, p. 585.

<sup>61</sup> Powers, *Navajo Trading*, pp. 245-246.

<sup>62</sup> Colin Tanner, Interview with the Author, Gallup, New Mexico, January 7, 2010. Tanner has owned T & R Market since 1972. He first began trading at Keams Canyon, Arizona in 1948.

UITA members generally, and leading officers of that organization specifically, were up in arms as soon as they became aware of the findings and suggestions contained in report of the FTC investigations. Charles M. Tansey,<sup>63</sup> legal counsel and secretary for the UITA, maintained that the FTC report was based entirely on a biased sample designed to coincide with the wishes of tribal officials and DNA lawyers. The report, he told one media outlet, “was largely based on rigged and incomplete testimony.” Tansey further attested that the findings of the investigation were “unfairly based on testimony given by fewer than 100 Navajos and the FTC only permitted anti-trader witnesses to testify.”<sup>64</sup>

Indeed, there would always inevitably be a few dissatisfied customers; this is simply part of any business. Ed Foutz, a trader at Shiprock, New Mexico, stated:

I think that when you do business over a period of a year with, let’s say, 5,000-6,000 people, you’re going to have ten, maybe, for some reason or another, [that] are not satisfied, and maybe justifiably so...you’ve made a mistake or something’s happened like their piece was lost.... Even though you’ve replaced it, they end up being unhappy. And I think those are the majority of the people that were heard at those hearings. I don’t think, honestly, it was a representation of the general or the large market that was dealing in the pawn business at that time.<sup>65</sup>

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<sup>63</sup> Charles “Bud” Tansey was born in 1915 in Kansas City, Kansas. In 1938 he graduated from law school at Kansas University and in 1939 was admitted to the New Mexico Bar Association. He practiced law in New Mexico for the duration of his career, representing both the Navajo Nation and the UITA. (Charles Tansey, Cline Library Interview, Farmington, New Mexico, March 10, 1998).

<sup>64</sup> Albert J. Sitter, “Traders Criticize U.S. Report Telling of Cheated Indians,” *Arizona Republic*, June 16, 1973.

<sup>65</sup> Ed Foutz, Cline Library Interview, Shiprock, New Mexico, March 9, 1998.

Peterson Zah, director of the DNA and of Navajo heritage himself, stated contrarily that the report was entirely accurate and “got to the meat of the situation.”<sup>66</sup> The DNA was aware of the unpopularity of the investigations and new regulations among the Indian traders, but had acted in the manner that their organization believed necessary and proper. “The traders didn’t like what we did,” Zah says, “but I was there. We didn’t have a choice. The complaints against the traders were just too overwhelming.”<sup>67</sup> Robert Hilgendorf, senior attorney at the DNA’s Chinle office, shared Zah’s sentiments. “I think the trader will continue to exist and probably should continue to exist,” he said. “We’re not trying to eradicate the trader or trader system. I think it’s like any other institution on the Navajo Reservation. They have to recognize that times are changing.”<sup>68</sup>

Many longtime traders were dismayed that their Navajo customers and friends did not speak up on their behalf during this crucial time. The majority of traders were in fact responsible and trustworthy and had spent decades building a mutual trust-based relationship with the Indians. It came as a surprise to many that the Navajos spoke only of the few bad apples and mentioned little, if anything, to the DNA about the many beneficent traders.

Concerned traders from all across the reservation immediately began corresponding with one another and with Secretary Tansey in Farmington, New Mexico. The recommended regulations would put a stop to pawn overnight, making the institution not only unprofitable for the traders but also placing a heavy burden of legal

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<sup>66</sup> Ibid.

<sup>67</sup> Peterson Zah, Cline Library Interview, Tempe, Arizona, March 16, 1999.

<sup>68</sup> Quoted in Sherry Simmer Robinson, “Navajo Jewelry: High Fashion and Pawn System,” *The Nation* 221(19) December 6, 1975, p. 584.

responsibility upon them. Even the smallest infraction could lead to a lawsuit by what the UITA viewed to be a trigger-happy DNA.

Secretary Tansey, in a comment to the *Gallup Independent*, protested that “the present proposed regulations may terminate trading entirely and certainly, if continued, it would have to be on a cash basis and credit would have to be terminated...to take action which would terminate credit for Indians would seem to be a step backward and would seem to put the Indian back in the 18<sup>th</sup> or 19<sup>th</sup> century rather than in the 20<sup>th</sup> and nearly the 21<sup>st</sup> century.”<sup>69</sup> Another trader, in a private correspondence, upheld Tansey’s concern about a cash-based economy on the reservation:

The new law will require that the Indians be put on a cash economy. A cash law will cause many hardships for [them], for their pawn is used like a note at the bank. They borrow on their possessions for everyday necessities. If the law is enacted the Indian will be forced to go off the reservation to pawn. He will be at the mercy of overnight pawnshops, or he will be forced to sell his jewelry and possessions for gas...No way are the Indians ready for cash business. Pawn is a way of life for the Indians.<sup>70</sup>

Tansey further opined that his organization, the UITA, “does not believe that the Indian in general nor their leaders understand with any thoroughness what the proposed new regulations will do and what effect they will have on the people on the reservation.”<sup>71</sup> His concerns may indeed have been valid, for even former DNA

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<sup>69</sup> “Traders See Credit Threat,” *Gallup Independent*, March 25, 1975.

<sup>70</sup> Undated letter from Ray Wells, UITA Papers, Cline Library MS299, Series 3, Box 6.

<sup>71</sup> “Traders See Credit Threat,” *Gallup Independent*, March 25, 1975.

chairman Peterson Zah, in an article published in 1999, has acknowledged that the regulations ultimately have had an adverse effect on many reservation families.<sup>72</sup>

Still another private correspondence, between two officials with the Navajo Nation Office of Program Development, attested to the over zealousness of the suggested new pawn regulations. In January 1974 Eric Natwig wrote:

In the proposed Navajo Tribal Trading Post Act, there is a basic question whether the regulations imposed upon the traders are so onerous, and the civil remedies so punitive, as to make it economically untenable for some traders to continue operation. A reading of the proposed Act leads one to project the following as possible or likely outcomes: 1.) Some traders may cease to extend credit to any but the most reliable customers...2.) Some traders may cease operation altogether, leaving the Navajos who depend upon him without any accessible retail outlet, 3.) To the extent that the costs of operating trading posts is increased, these costs will be passed on to the Navajo consumers in increased prices.<sup>73</sup>

What followed was a series of legal battles that spanned more than two years. The UITA and its team of lawyers refused to concede such burdensome modifications to their long-entrenched business. The DNA and Navajo tribal council likewise would not bend towards the center unless forced to do so. Two years worth of ensuing requests and counter-requests between both agencies can be found in scores of legal documents. Copies of the FTC's suggested trading practices were marked up by lawyers from both

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<sup>72</sup> Bill Donovan, "Navajos Losing Heirloom Jewelry They've Pawned," *Arizona Republic*, June 21, 1999.

<sup>73</sup> Natwig to Jaenish, January 22, 1974, UITA Papers, Cline Library MS299, Series 3, Box 6, Folder 87.

sides, each group continuously changing the language of the regulations to better suit their own interests while simultaneously attempting to find an acceptable middle ground.

On August 29, 1975, fully two-and-a-half years after the publication of the FTC report on trading, the new regulations were published in the Federal Register. A portion of them would become effective almost immediately, on September 26, but the balance would not become effective until January 1, 1976.

The new trading regulations reflected many of the findings of the FTC and had an especially large impact on pawn. Each trader wishing to do pawn must obtain a license from the tribe at a cost of \$200 annually. The BIA's 1975 pawnbroker regulation stipulated that, "No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian within the exterior boundaries of the Navajo, Hopi or Zuni Reservations, unless such person is an agent of a bank, trust company, savings or building and loan association, or credit union operating under the laws of the United States or the laws of New Mexico, Arizona, or Utah, or unless such person holds a reservation pawnbroker license or holds a valid license to operate a reservation business."<sup>74</sup>

The period a trader had to hold a pawned item was extended to a minimum of one year (previously it had been six months). The adopted regulations also sought to implement a uniform interest rate, stipulating that, "no pawnbroker may impose an annual finance charge greater than 24% of the unpaid balance for the period of the loan nor assess late charges or delinquency charges on any loan."<sup>75</sup> This created an environment in which the trader could scarcely turn a profit on pawn. "If you lend on

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<sup>74</sup> BIA Title 25, Chapter 1 Pt. 252 Subpart D: Pawnbroker Practices, Sep. 1975 (UITA Papers, Cline Library, MS299, Series 3, Box 6, Folder 87).

<sup>75</sup> Ibid.

pawn a bracelet at 24 percent [a year], that's two percent a month," says Ed Foutz. "On a \$50 bracelet, if you were to pawn it for \$50, that means at two percent for the first month you'd get \$1. That would not cover your initial costs in pawning.... It became totally unprofitable, or unfeasible to pawn to that particular rate...."<sup>76</sup>

Gone were the days when a trader could sell a dead pawn item and retain the entire sum taken in from the sale. This practice had been cited in the FTC report as a particularly egregious one, where a trader might sell an item for ten times the amount loaned on it, thus receiving a substantial windfall profit. Peterson Zah, who was with the DNA at the time, explains this type of situation as it occasionally arose among some of the more crooked traders: "A Navajo might pawn a bead necklace for \$100, and the Navajo lady might be paying the interest on that on a monthly basis, so that it won't become dead. The trader would maybe get tired of that, because so little money is coming off that pawn. He would declare it dead pawn, and then sell it for \$500, \$800, \$1,000, and they would keep all of that money." Zah and his DNA colleagues maintained that, in such instances, the money from the sale rightfully belonged to the original owner of the pawned item, not the trader. "So we got into a big hassle over that," says Zah.<sup>77</sup>

The adopted regulations did indeed contain provisions addressing this concern. In order to recoup any monetary losses from a pawn transaction where the item became dead, the trader would only be allowed to deduct the expenses incurred from "advertising and conducting the sale," an amount that was not to exceed 10 percent of the amount initially loaned on the item. Second, the trader could deduct the amount of the loan "plus

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<sup>76</sup> Ed Foutz, Cline Library Interview, Shiprock, New Mexico, March 9, 1998.

<sup>77</sup> Peterson Zah, Cline Library Interview, Tempe, Arizona, March 16, 1999.

any accrued finance charges.” Finally, the trader could retain the finance charge, to be calculated “at the annual percentage rate of the original loan on the unpaid balance of the loan for the period from the date of the default to the date of sale.” All remaining proceeds from the sale of a dead pawn item must, by law, be returned to the original owner of the item.<sup>78</sup>

The new regulations also gave a considerable amount of leeway to Navajos when redeeming their pawn. Whereas before a customer must present their pawn ticket in order to redeem their item, this was no longer necessarily the case. The new regulations explicitly that “redemption may not be denied on the sole ground that the pledgor is unable to produce a receipt or pawn ticket, provided the pledgor gives a reasonable description of the pawned item or makes an actual identification of the item.” The law further maintained that a trader could not impose any additional charges for the loss of a pawn ticket.<sup>79</sup> The latter component may have only been nominally necessary, as most of the more experienced traders traditionally knew their Navajo customers on an individual basis and could identify their pawn without the aide of the ticket. However, the presence of this in the regulation speaks to the fact that some nefarious traders were using the loss of a pawn ticket as an excuse to refuse redemption of a pawned item, thus allowing them to sell it as dead pawn.

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<sup>78</sup> BIA Title 25, Chapter 1 Pt. 252 Subpart D, UITA Papers, Cline Library, MS299, Series 3, Box 6, Folder 87.

<sup>79</sup> Ibid. It further stipulated that, in instances where a customer lost their pawn ticket, “The pledge may require the pledgor to sign a receipt for the redeemed pawn. No person other than the pledgor may redeem pawn without a ticket.”



Image 5

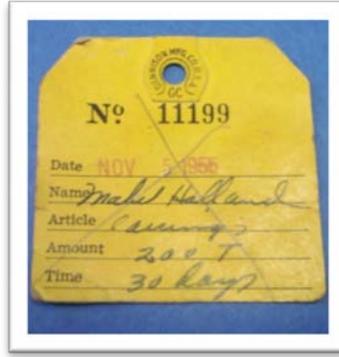


Image 6

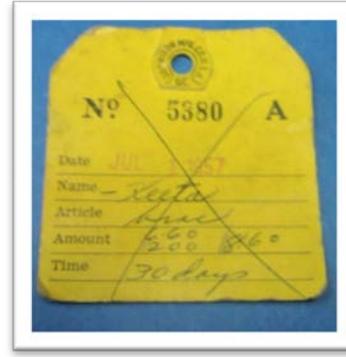


Image 7

Image 5: Bundle of pawn tickets (HUTR 17512) from Hubbell Trading Post. The dates on the tickets range from 1960 through 1966. Photographer: NPS Photo by Pete Hubbell

Images 5 & 6: Two pawn tickets from 1956 and 1957, before the new federal trading regulations went into effect in 1975. Note that the tickets only require minimal information: Date, Name, Article, Amount, and Time. (Photo: The Author)

Many of the new regulations had been conceived in the minds of individuals with little or no experience in Navajo trading, and the result would be devastating to reservation traders. “They wrote those laws probably thinking they were dealing with a modern type of business,” Arizona trader Bruce Burnham succinctly states. “Well, Indian trading has never been what you would call the normal mode of business.”<sup>80</sup>

In response to the widespread turmoil among traders, UITA President Elijah Blair held a meeting of that organization in Farmington, New Mexico prior to the regulations going into effect. “It appeared to be the consensus of the traders attending...that most of them would terminate pawn transactions and cash loan transactions after September 26, 1975, when a portion of the new regulations goes into effect and when the regulation interest rate takes over,” Blair wrote in his summary of the affair. At the meeting it was, however, acknowledged that ultimately the Navajo Nation had the right to instigate

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<sup>80</sup> Bruce Burnham, Cline Library Interview, Sanders, Arizona, July 17, 1998.

whatever changes it deemed necessary. “The UITA membership recognized that Indian Traders are operating upon the land of the Navajo Indians,” Blair wrote, “and since the Navajo Indians have asked for new regulations the traders fully recognize their right to have such regulations and fully recognize the traders’ obligation to comply with the regulations.”<sup>81</sup>

As a follow-up measure, UITA Secretary Tansey mailed a letter of query to all members of the organization in November 1975 in order to more accurately ascertain the effects the regulations were having. Each letter contained a postcard that Tansey asked the traders to fill out and return to him. The results of the survey were almost unanimous: the institution of pawn was dead on the Navajo reservation.<sup>82</sup>

Of the approximately 125 postcard inquiries sent out by Tansey, he received responses from 54 traders. Forty-five of them indicated that they had already ceased taking pawn, and only three said they would continue taking it; all three of these noted on the cards that they were located off-reservation. About half stated they would resume pawn if the new regulations were changed favorably, but the balance had no desire to ever return to pawn as a trading practice.<sup>83</sup> “I wouldn’t take pawn again if they would let me write my own law as long as the Truth In Lending Act Law is in effect and the DNA is on the reservation,” a distraught Raymond P. Blair informed Tansey.<sup>84</sup> His sentiments no doubt reflected those of many longtime traders.

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<sup>81</sup> Statement of Elijah Blair, September 22, 1975, UITA Papers, Cline Library, MS299, Series 3, Box 6.

<sup>82</sup> Many individuals would cite this as evidence that the pawn system on the reservation was indeed corrupt: “My reaction to their all uniformly dropping reservation pawn was that now [the traders] had to follow the laws that [off-reservation pawn dealers] were following, the disclosures and interest rate, and the sale of pawn...the big issue was that you had to give back to the Navajo the difference between what you lent him and what you sell, after your cost of sale; all their profit is gone.” (Robert Hilgendorf interview with Willow Powers, 1999, in Powers, *Navajo Trading*, p. 210).

<sup>83</sup> UITA Papers, Cline Library, MS299, Series 4, Box 8.

<sup>84</sup> Blair to Tansey, November 24, 1975, *Ibid.*

Irl Wallace, current proprietor of Turney's trading store in Gallup, New Mexico, noted that his family "used to do some pawn a long time ago, but the regulations got so extensive that we gave it up for a straight buy, sell and trade business. We felt like we had to make a decision, and that was the easier way to go." Wallace, like all other traders, had been forced to make a decision about pawn. His business continues to prosper without the presence of pawn.<sup>85</sup>

Traders specifically objected to the 12-month retention period for pawn because "it would tie up the trader's loan funds for too long." The DNA responded by saying that the Navajo tribe "considers the one year period essential. Since the pawned items are usually worth substantially more than the amount loaned, the tribe wants to limit the situations in which the pawn can be lost."<sup>86</sup>

The ultimate result, writes one historian, was that "traders were outraged at what they considered to be an unfair and un-business like situation created by the new regulations."<sup>87</sup> In addition to these new policies, the perpetual presence of the DNA meant that there would always be the threat of a lawsuit if a trader violated even the most minute component of the trading regulations. Given the volume of the trade, it was simply inevitable that a trader would make an unintentional mistake from time to time, and for many it was simply no longer worth the risk. Thus, reservation traders were left with an ultimatum: cease taking pawn, or abandon their trading post and build a new one off the Navajo reservation and adopt preexisting state and local pawn laws. Either way, the individuals most detrimentally affected would be the Navajos, who were heavily reliant upon the reservation trader for essential merchandise items. When the new

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<sup>85</sup> Irl Wallace, Interview with the Author, Gallup, New Mexico, November 6, 2009.

<sup>86</sup> Ibid.

<sup>87</sup> Powers, *Navajo Trading*, p. 210.

regulations came out, Russ Griswold relates, “the biggest downturn was to the Navajos. Traders couldn’t comply with the regulations and were forced to go off the reservation.”<sup>88</sup> The DNA and Navajo tribal council had thus unwittingly destroyed an institution that, while certainly having its fair share of faults, was nevertheless important to the Navajo economy. The ironic paradox is that ultimately, the FTC investigations and resulting new regulations may have helped the traders themselves much more than the Navajos.<sup>89</sup>

#### Navajo Pawn as it Exists Today

The implementation of sweeping new regulations on Navajo trading and pawn has had a paramount effect on the institution as a whole. A business practice that had been a perpetual presence on the Navajo reservation for more than a century disappeared almost overnight. Realizing that off-reservation pawn laws in New Mexico remained mostly unchanged, many traders from the Arizona reservation moved across the state line and opened up shop there. “It was no longer feasible on the reservation, so pawn moved to the border towns,” noted Bill Malone, who was trading at Pinon, Arizona in 1973 when the FTC report came out.<sup>90</sup> Since the implementation of the regulations, Navajo pawn has flourished to a greater extent in New Mexico than Arizona, due primarily to the individual pawn laws of the two respective states. “Arizona made it so that it wasn’t lucrative for us,” explained Colin Tanner, “but New Mexico made it so that we can live with it.”<sup>91</sup> Thus, the institution of Navajo pawn, once it became endangered, necessarily

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<sup>88</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010.

<sup>89</sup> “I feel bad for the people in many ways,” says Ed Foutz, “because I think first and foremost it hurt the people pawning in that they now have to travel. They didn’t quit pawning jewelry – pawn just moved off the reservation to the surrounding communities.” (Ed Foutz, Cline Library Interview, Shiprock, New Mexico, March 9, 1998.)

<sup>90</sup> Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010.

<sup>91</sup> Colin Tanner, Interview with the Author, Gallup, New Mexico, January 7, 2010.

adapted in order to survive. “Pawn...was an aspect of Navajo business that did not so much change as move,” writes Willow Powers.<sup>92</sup>

While there continue to be many trading posts on the reservation, none of them accept pawn; all are operating as a straight buy, sell, and trade business.<sup>93</sup> However, countless numbers of Navajo people still rely on pawn as a means of financial subsistence. Accordingly, many Navajo people are forced to drive long distances to off-reservation pawn locations, the most prominent of which are in New Mexico. This presents a tremendous hardship and inconvenience to the reservation Indians, and the fact that pawn nevertheless continues as such an important enterprise is a testament to its entrenchment in the Navajo culture and economy.

One of the more modern Navajo uses for pawn is as a safety deposit box of sorts. Many Navajos own valuable, old pieces of jewelry and fear that they might be stolen from their homes, either by thieves or sometimes by other family members. “There’s a lot of pilferage on the Navajo reservation. The hogan left alone, people break into it. Family members sometimes steal from the other family members. So they leave [pawn] for safekeeping in many cases,” explains Tobe Turpen.<sup>94</sup> Bruce Burnham, a trader at Sanders, Arizona, further explains, “the family knew that you had it in your pawn vault, and they knew you weren’t selling it, you weren’t threatening to sell it. So it was safe where it was, [and they would] just leave it there.”<sup>95</sup>

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<sup>92</sup> Powers, *Navajo Trading*, pp. 210-211.

<sup>93</sup> One partial exception is the trading post at Tuba City, Arizona, where they continue to accept pawn, but only in exchange for groceries. They do not do cash pawn. (Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010.)

<sup>94</sup> Tobe Turpen, Cline Library Interview, Albuquerque, New Mexico, December 13, 1998.

<sup>95</sup> Bruce Burnham, Cline Library Interview, Sanders, Arizona, July 17, 1998.

Pawning an item with a reputable trader ensures that the item remains safe and secure, for the small fee of the interest charged. In such instances, a Navajo might pawn their valuable jewelry, redeem it before it goes dead, then repawn it, thus perpetuating a continuous cycle. “They knew the trader would never resell the items no matter how long – years and sometimes decades – it took the family to reclaim them.”<sup>96</sup> Kathleen, a Navajo employee at Hubbell Trading Post National Historic Site in Ganado, Arizona, further attested to this important function of pawn. “Some people would rather pay interest on pawn and keep it safe than keep jewelry in their homes,” she says. “A lot of times, it is still cheaper than getting a box [at the bank].”<sup>97</sup>

Many Navajos own items that are used in annual ceremonies or for special events, and will keep them in pawn for safe keeping until they are needed. One such event is graduation in May of each year: “Graduation is a big deal. They come in to get their ‘family jewels,’ so to speak,” explains one trader.<sup>98</sup> Beginning around the end of April, the number of pawned items being redeemed experiences a drastic increase as families come in to get them for graduation. In June, once all of the festivities have passed, there is an increase in repawning, as the people bring them back to their “safety deposit box.”

Today, one of the largest business operations involved in Navajo pawn is Griswold’s, located on the outskirts of the Navajo capitol in Window Rock, Arizona. The store is situated just across the state line, at Tse Bonito, New Mexico. The proprietor, Russ Griswold, runs the pawnshop in conjunction with his two sons. Together, along with many employees, they maintain a facility of over 12,000 square feet

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<sup>96</sup> Bill Donovan, “Navajos Losing Heirloom Jewelry They’ve Pawned,” *Arizona Republic*, June 21, 1999.

<sup>97</sup> Kathleen Tabaha, Interview with the Author, Ganado, Arizona, November 6, 2009.

<sup>98</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010. In the month of May, 2009, Griswold’s store averaged 440 pawn transactions per day, a considerable increase over other months throughout the year.

with multiple storage rooms to house pawned items. Griswold's is somewhat singular in that they deal almost exclusively in pawn and only sparingly do business in retail Navajo goods.<sup>99</sup>

Like most modern-day Navajo traders, Russ Griswold has spent his entire life involved in the industry. He came to the reservation with his family at the age of three and grew up in and around trading posts. Beginning in 1958 he operated his own store, and at one time owned posts at three locations in Arizona: Pine Springs, Nazlini, and Fort Defiance and later operated a post at Navajo, New Mexico before moving to his current location at Tse Bonito. He notes that at his older reservation stores, he charged no interest on pawned items if they were exchanged for other items in the store (trade pawn), but if the customer wanted cash (cash pawn), then there was an interest charge.<sup>100</sup>

Griswold remained on the reservation even after the new trading regulations went into effect, but eventually, like many traders, was forced to relocate. "Within ten years of those regulations," he says, "trading posts as we knew them had phased out and became small neighborhood grocery stores. During Peterson Zah's administration they decided they wouldn't renew leases to non-Indians. All the sudden one day my lease was offered to a Native American. I said the heck with that and moved to this location [Tse Bonito, N.M.]."<sup>101</sup>

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid. "There was a big difference between trade pawn and cash pawn," reiterates former trader Elijah Blair. "A lot of people thought it was all cash pawn...[but] probably the majority of our pawn on the reservation was actually trade pawn, [and] there were no interest charges on trade pawn. All of our markup was already marked up in the merchandise that you sold." (Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998.)

<sup>101</sup> Ibid.

Griswold's pawn business has grown over the years to phenomenal proportions, taking in thousands upon thousands of pawned items every year.<sup>102</sup> He conservatively estimates his pawn inventory (as of January, 2010) at over 60,000 individual items, including some 2,400 saddles, 7,000 blanket hangers (with each hanger containing multiple Navajo weavings), 1,600 baskets, several hundred firearms, plus jewelry items which number well over 10,000.

Griswold and his employees maintain a very well organized compound. Two large vaults house pawned jewelry; one vault contains items pawned between the sixteenth and the thirtieth of the month, the other from the first through the fifteenth. The latter vault is larger due to the fact that there is a marked increase in pawn taken in during the first few days of each month, a pattern that coincides with the issuance of social security checks. The jewelry is kept on racks inside the vaults and is meticulously organized. Stapled to each bag is a computer-generated pawn ticket stating the exact date and time of the transaction, description of the item, and other pertinent information. A different colored tag is used for each month of the year. The bags are arranged inside the vaults according first to the date, then to the time, of the pawn transaction. When a notice has been mailed to the owner that the redemption deadline is approaching, a ticket verifying this is added to the bag. Griswold's always sends at least two notifications on all pawn items. This maintains compliance with state statutes, and also helps with inventory purposes.<sup>103</sup>

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<sup>102</sup> There is always a minimum of five clerks working at the counter at any given time at his store (Ibid.)

<sup>103</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010. In 2008, Griswold's spent a total of \$21,500.00 on postage for these postcards. In 2009, they expended \$19,298.00. It is unlawful for them to assess an additional fee on pawned items to recover these monies; it is an operating expense that they simply must live with. Unfortunately, postage costs have invariably risen over the past twenty years, whereas New Mexico pawn laws have not changed at all. When New Mexico's

Keeping track of such a vast inventory is no small feat, and requires the use of modern technology, a convenience that was not available to early Navajo traders. In the 1970s it would not have been possible to conduct pawn on the level that Griswold's does, with tens of thousands of items in storage at any given time. This was one reason for the continued loss of pawned items and the resulting misunderstandings with customers that were cited in the 1973 FTC report. In the old days, it was simply impossible to keep track of everything. This is no longer the case. The advent of a computer-based inventory system has enabled large-scale trading and pawning operations such as Griswold's to not only survive, but prosper.

"We realized that the handwritten system wouldn't work" with such a large volume of pawn, Griswold explains. The computer database system, designed by Warren Lyons of Shush Yaz Trading Post in Gallup, New Mexico, is now used by most of the larger trading operations. The computer software was put in place at Griswold's store in 1989. This use of technology revolutionized the institution of Navajo trading and especially pawn. Whereas handwritten pawn tickets once had to be filled out for every single transaction, the computer now prints these tickets in a fraction of the time. While saving tremendous amounts of time, this has the added benefit of increasing legibility. "There are no longer worries about penmanship," Griswold relates with a laugh. The system helps to eliminate the frequency of human error and alleviates the trader from the unenviable task of distinguishing between illegible words and numbers, a frequent problem with the old handwritten pawn tickets. Additionally, the computer system

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pawn laws were last changed in 1984, postage was 14 cents per postcard. Today, it is 44 cents. This displays the need for revisions in the current pawn laws in order to compensate for these discrepancies.

makes it faster and easier for Griswold's employees to locate a piece of pawn in the warehouses when the pledgor comes in to redeem it.<sup>104</sup>

This software allows for an extremely efficient, reliable system for the pawn business. "If you really want to make me mad," Griswold says, "lose a piece of pawn. It hardly ever happens. Maybe once every two years or so. The system we have works very well."<sup>105</sup> He and his sons take tremendous pride in their business and value their longstanding relationship with the Navajo people. A further testament to their reputation is the fact that many of his customers drive long distances from rural locations to pawn at his store, deliberately passing numerous other pawnshops en route. He estimates that "99.9 percent" of his pawn comes from people living on the Navajo reservation. Despite the distance for many of these people, it remains the closest reliable and reputable pawning location for many on the Arizona portion of the reservation, and most Navajos would prefer to drive the extra distance to his store than settle for a pawn transaction at a closer but less reputable establishment.

In addition to computer-generated pawn tickets, the pawn software also stores a massive database of over 35,000 Navajo customers who have done business at Griswold's since the system was first used in 1989. Thus, the trader can now quickly look to the database to determine an individual's business history at the store. All loans and re-negotiations of loans at Griswold's are based on a customer's history, much like loans at a bank are based on a person's credit. The database allows for an immediate "background" check of any individual who comes into the store, unless they are a first-time customer (with a customer-base already exceeding 35,000, it is rare for a new

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<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

Navajo customer to come in to Griswold's). If a person is found to have been a long-time customer with a good history (and indeed most are), they will be loaned a higher amount on their pawn, and may also be allowed to renegotiate their initial pawn transaction if it becomes necessary. First-time customers are never turned away, but are generally offered less on their pawn until they have built up a favorable history.<sup>106</sup>

New Mexico traders operate under the state's pawn laws, creating a relatively uniform set of conditions among all larger trading operations. The law stipulates maximum interest rates, minimum holding periods, as well as a maximum amount that can be loaned on any one item (\$2,000). New Mexico pawn laws allow for a one-time interest charge of 10 percent for the first month, followed by four percent for each of the three months thereafter.<sup>107</sup> These interest rates are adhered to by nearly all Navajo traders, although circumstances do arise in which they will lower the rates for certain customers.

A 120-day holding period for unredeemed pawn is the minimum required by New Mexico state law, although all Navajo traders hold pawn for considerably longer periods of time, usually at least a year. This one-year period exists as an unspoken mutual understanding between trader and customer; any trader selling dead pawn before a year has passed is likely to meet with unhappiness among their customers. "We hold pawn for a year," explains Bill Richardson of Gallup, "and if it hasn't been paid we contact them, write them a letter."<sup>108</sup>

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<sup>106</sup> Ibid.

<sup>107</sup> New Mexico Pawnbrokers Act, §56-12-1 *et seq.*; Bill Richardson, Interview with the Author, Gallup, New Mexico, November 6, 2009.

<sup>108</sup> Ibid.

New Mexico state pawn laws require that a notice be mailed to a customer before any pawned item becomes **Error! Bookmark not defined.**dead pawn. There is no stipulation in the law that one must verify receipt of the notification, although almost all traders maintain some type of documentation, such as computer receipts or postal service receipts. “This covers the trader in case the Navajo claims to have never received notice of their pawn going dead.”<sup>109</sup> Most traders will mail not one, but several notices to their Navajo customers. In most cases they will respond, either calling on the phone or coming in to the store to ask for an extension, which is always granted, no questions asked. “This is considered an unspoken courtesy,” says one trader, noting that the customer must continue to pay interest for the extension period but that the item will not become dead pawn.<sup>110</sup>

Bill Richardson, proprietor of Richardson’s in Gallup, New Mexico also follows the four percent interest guidelines; however, many times it is prudent to reduce this rate for some customers. “Sometimes the interest runs up so high that we cut it back to two percent,” he says. Such a practice has led to a very high reputation for Richardson’s among their customers, which is worth much more to any trader’s business than the small monetary difference between two and four percent. “We get along real well with the Indians,” says Richardson.<sup>111</sup> When this author entered Richardson’s and inquired as to the possibility of an interview, one Navajo customer, overhearing the subject of the inquiry, looked over and said enthusiastically, “You’ve come to the right place.”

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<sup>109</sup> Colin Tanner, Interview with the Author, Gallup, New Mexico, January 7, 2010.

<sup>110</sup> Bill Richardson, Interview with the Author, Gallup, New Mexico, November 6, 2009.

<sup>111</sup> Ibid. Successful traders go to any length necessary to maintain amicable relations with their pawning customers. This includes circumstances involving a person’s death. Elijah Blair explains, “In cases of death...if people had pawn in there, we always somehow made arrangement, because they always...buried all the jewelry with the deceased, and we always somehow made arrangement to get it back to them. [We] may have to switch things around, but we definitely did it.” (Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998).

One detrimental modern phenomenon is the pawning of unwanted items with no intention of redemption. This practice, inasmuch as Navajo pawn is concerned, exists primarily in more urban areas such as Gallup and Farmington, New Mexico and Winslow, Arizona, and results from the tendency of Navajos visiting the flea market to look for jewelry and other items at cheap prices, then take them to the pawnshop to make a quick and easy profit. Other times, unwanted birthday and Christmas gifts are pawned for this same purpose. In these cases, the customer will seek the pawnshop willing to loan the highest amount of money on the item, because these individuals have no intention of ever redeeming their pawn. Modern traders have learned to watch out for such practices in order to avoid lending too much money on an item that will never be redeemed.<sup>112</sup> Indeed, most longtime Navajo traders refuse to accept common pawnshop items such as electronics and other goods of modern manufacture for this very reason.

Another very modern, and unforeseen, circumstance of pawn in the Gallup area has been the effect of a new tribal casino, located several miles east of the town along Interstate 40.<sup>113</sup> The casino, which has only been in operation since 2008, has resulted in several interesting economic changes in the area, and has had a noticeable effect on pawn.

“The Indians come in to pawn to get money for gambling,” explains Bill Richardson. Whereas before a customer would often borrow only as much money as they needed to get by, they will now borrow substantially greater amounts on their pawn. Once this money is lost at the casino, the customer will oftentimes return to the store to

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<sup>112</sup> Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010. This practice is not limited to Navajo pawn, but rather has become a widespread practice at pawnshops across America. (Caskey, *Fringe Banking*, p. 71).

<sup>113</sup> Fire Rock Casino, a 64,000 square-foot facility, is located near Church Rock east of Gallup, and opened to the public in November, 2008.

negotiate a larger loan. “They keep coming back and raising their initial pawn. Say they pawn a \$1,000 belt for \$500, then [they] come back in a week and raise the pawn \$100, then again the next week.”<sup>114</sup> This has had an extremely detrimental impact on many Navajo people, as they find themselves getting further into debt and unable to redeem their pawned items.

Other traders further attest to the negative impacts of the new casino on the Navajo people. Bill Malone notes, “The only two good things about that casino is that it hires quite a few Navajos to work there, and it lets the tribe get some money back.” However, he also notes that the majority of the casino’s patrons are Navajos themselves, and it is not infrequent for an individual to lose their entire paycheck there and be forced to pawn an item they might not have otherwise pawned.<sup>115</sup>

Contrary to Richardson and Malone in Gallup, Russ Griswold at Tse Bonito, N.M. says that he has actually lost customers since the casino opened. The reasons for this are uncertain, but it is likely related in some way to his distance from the casino, his store being some 40 miles away, whereas Gallup is only a few miles away from the casino. Many of the Native Americans living on reservation lands, who comprise the majority of Griswold’s customer base, simply do not travel so great a distance to gamble at the casino, whereas the people living in and around Gallup are much closer and thus frequent the gambling establishment more often.<sup>116</sup>

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<sup>114</sup> Bill Richardson, Interview with the Author, Gallup, New Mexico, November 6, 2009. The practice of returning to the trader and raising one’s pawn is not new. Elijah Blair states, “Back before the days of the Truth in Lending Act, [the Navajo] would come in and...he would pawn a bracelet that’s worth \$500. Well, he may only buy \$10 worth of stuff on his pawn...it’s just like an open-end account. He would come in a month later [and say], ‘Well, I want some more flour,’ so then you would just keep adding it to that bracelet as he came in.” (Elijah Blair, Cline Library Interview, Page, Arizona, February 9, 1998.)

<sup>115</sup> Bill Malone, Interview with the Author, Gallup, New Mexico, January 7, 2010.

<sup>116</sup> Russ Griswold, Interview with the Author, Tse Bonito, New Mexico, January 7, 2010.

The recession that began in 2008 has affected people all over the globe, and those living on the Navajo reservation are no exception. Off-reservation pawnshops in Arizona and New Mexico have witnessed an increase in business as people are forced to pawn treasured family heirlooms in order to put gas in the car and food on the table. In Winslow, Arizona, at Dollar Trading & Pawn, “The vast majority of regulars through the doors are Native Americans. Some are hawking handsome wool blankets...but increasingly, as recession drives the local population on to part-time working or out of a job, they come to pawn the family possessions.”<sup>117</sup>

In January 2010, the Navajo County Board of Supervisors in Navajo County, Arizona enacted new pawn regulations aimed at preventing stolen items from being pawned at trading posts surrounding the reservations. The new regulations could have far-reaching ramifications and will allow the county sheriff to levy a fee of three dollars on each pawn transaction, the revenue from which will be used to pay the salary and operating costs of a full-time employee charged with overseeing pawn transactions throughout the county. Traders and Navajos both contend that such a fee is excessive and will put a strain on the usefulness of the industry to the Navajo people.

An additional provision of the new regulations requires pawn dealers to take a photograph of every person who pawns an item, as well as of the item itself. Navajo County Sheriff K.C. Clark states that these photos will “provide the sheriff's office with a visual record of the item pawned and the person pawning it, allowing for more rapid and efficient identification of stolen items and prosecution of individuals pawning them.” However, this raises questions of privacy rights of customers, and many are understandably wary of having their photograph taken every time they pawn an item.

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<sup>117</sup> Chris McGreal, “Observer Foreign Pages,” *The Observer* (England), August 30, 2009, p. 30.

The situation is reminiscent of that which occurred in 1973 with the FTC hearings. Once again, public hearings were held, with many traders and pawnbrokers attending in order to voice their adamant opposition to the measure. The primary area of contention among traders surrounds the implementation of the three-dollar fee, which they claim will cause a decrease in pawn transactions.

The Navajo County Board of Supervisors has included a provision that the program will be reviewed after one year to determine its effectiveness. At that time, changes can be made according to their findings. Interestingly, these regulations are applicable only in Navajo County, Arizona, and will have no effect in New Mexico or Utah. Thus, the detrimental impact upon Arizona pawnbrokers could inversely have a positive impact for traders in New Mexico and Utah who accept pawn. At any rate, this serves as a modern example of the continuing regulation of the pawn industry in and around the Navajo Nation.<sup>118</sup>

Pawn as an institution has, since time immemorial, been prone to many negative perceptions by the American public. This has been true not only of pawn in general, but also of Navajo pawn. In many ways, Navajo pawn, in its various complexities, is a highly misunderstood trading practice that has become heavily rooted in tradition and culture. Over many decades, pawn has become a key component of the Navajo economy and way of life, and many of those peoples are dependent on it as a means of banking. The importance of pawn to the Navajo people is made evident by the persistence of the institution despite numerous attempts by outside forces to undermine the practice. Despite continuing changes in laws and regulations, as well as the successful attempts in

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<sup>118</sup> Bill Donovan, "Navajo County Pawn Regulations Aimed At Stolen Items," *The Navajo Times*, January 21, 2010.

the 1970s to eliminate pawn from the reservation altogether, pawn has managed to survive into the modern era and in many instances continues to thrive. Because of its controversial nature, Navajo pawn will doubtless face more challenges in the future, but the tremendous importance of the institution to the Navajo culture will ensure that pawn will likely survive in some form for a long time to come.

Appendix A: 1973 Federal Trade Commission Report

## Appendix B: Truth In Lending Act

## Appendix C: Payday Loan Act

## Appendix D: 2010 Pawn Rules Chart

## Appendix E: Bibliography

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